Dillion[5] and two Malaysian cases, namely, *Lee Chow Meng* v. *Public Prosecutor*[6] and *Hashim Bin Pawanchee & Anor.*[7] We do not think it necessary to comment on any of these authorities save to say that we have considered them.

In this connexion we refer to the judgment in the Hong Kong case of *Attorney-General* v. *Dominic Cheung Kai Man:*[8]

"If the offences are distinct and separate it will normally be the duty of the judge to pass consecutive sentences, even if the seriousness of the individiual offences means that the total sentence will be more than could have been passed in respect of any one of them – the totality principle requires the court in the last instance to take a look at the total and to see whether, in the circumstances, it is just and appropriate and if not to reduce it accordingly."

On the facts of the case, we are of the view that the Chief Justice was perfectly entitled to come to the conclusion that the kidnapping and the extortion constituted one transaction. The Chief Justice did not err in principle.

The next question is whether the totality of sentences on each of the four defendants is manifestly inadequate. In this connexion we need refer to only one Hong Kong decision.

In *Attorney-General* v. *Lau Chiu-tak*[9] where Huggins V.P. said at p. 25:

"It follows from what we have just said that the test of manifest inadequacy is no different from the test of manifest excessiveness and that the same test must be applied whether the case happens to be an appeal brought by the appellant or a review at the instance of the Attorney General. Nevertheless, we emphasize that this court will be much more easily persuaded that a sentence is manifestly excessive than that it is manifestly inadequate – not because the test is different but because there is a presumption *in favorem libertatis* which the Crown has to overcome: see *R.* v. *Bitter* [1981] 27 S.A.S.R. 183, 185. The power of review was conferred to correct errors in exceptional cases and the court will be jealous to prevent encroachment on the discretion of judges and magistrates to impose a lenient sentence as they may think appropriate, provided that the sentence is one which in all the circumstances could reasonably be passed."

We are content to apply those principles to a review of sentence by the Public Prosecutor in Brunei. Here, we are unable to say in this case that the sentences were manifestly inadequate. Accordingly, the application is dismissed.

Order accordingly.

Solicitors: *Yong Wong & Chin; Szetu & Co.; D.F. Abang Zen.*

FRANCIS DANG ANAK NUYA v. PUBLIC PROSECUTOR

[C.A. (Yang P., Silke & Godfrey JJ.) 28 & 30 May 1988]

[Bandar Seri Begawan – Criminal Appeal No. 6 of 1987]

Criminal Procedure – Sentencing – Whether life imprisonment sentence for culpable homicide not amounting to murder is a sentence fixed by law – "Shall be punished with imprisonment for life" – "Not exceeding" – Meanings of – Effect of s. 39 of the Interpretation and General Clauses Act (Cap. 4) – Penal Code, ss. 6, 45, 53, 304, 305 – Interpretation and General Clauses Act (Cap. 4), s. 39 – Supreme Court Act (Cap. 5), s. 6(6) – Sarawak, North Borneo and Brunei (Courts) Order in Council 1951, s. 18(1)(c) – UK Criminal Appeal Act 1907.

The appellant was convicted and sentenced to life imprisonment for committing culpable homicide not amounting to murder (see [1988] 1 M.L.J. 89). The appellant appealed against this sentence to the Court of Appeal, contending that the phrase "shall be punished with imprisonment for life" contained in section 304 of the Penal Code is not a sentenced fixed by law.

Held, dismissing the appeal: (1) the punishment of "imprisonment for life" referred to in section 304 of the Penal Code is a sentence fixed by law;

(2) section 39 of the Interpretation and General Clauses Act (Cap. 4) does not affect the fixed nature of that sentence other than it would not permit any sentence greater than life imprisonment (*i.e.* death) being imposed.

Cases referred to:

(1) *R.* v. *Assa Singh* [1965] 1 All E.R. 938 (refd).
(2) *Chung Kum Moey* v. *Public Prosecutor* [1967] 1 M.L.J. 205 (follD).
(3) *Mohamed bin Jamal* v. *Public Prosecutor* [1964] M.L.J. 254 (follD).

COURT OF APPEAL.

Daljit S. Sandhu for the appellant.

Ivan Leong (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Silke J. (delivering the judgment of the court): Francis Dang anak Nuya – the appellant – was charged under section 302 of the Penal Code with murder – the intentional causing of the death of Jelenni anak Jawing on 3 April 1986. At the trial on 20 May 1987, he pleaded not guilty to murder but guilty to culpable homicide not amounting to murder. The Deputy Public Prosecutor, Mr. Ivan Leong, who appeared for the Public Prosecutor both at the trial and in this court, agreed to such a plea but as one based on that which he termed "the first limb of section 304". This plea was accepted by Macdougall J. sitting as a judicial commissioner.

Section 304 of the Penal Code of the Laws of Brunei reads:

"Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to 10 years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

The appellant was convicted and sentenced to life imprisonment. It is against that sentence that the appellant, by leave, now appeals.

Mr. Sandhu, who appeared for the appellant both here and below, submits that the phrase "shall be punished with imprisonment for life" contained in section 304 is not a sentence fixed by law and he prays in aid that portion of section 39 of the Interpretation and General Clauses Act (Cap. 4) which reads:

"Whenever, in or by virtue of any written law, a penalty, whether of imprisonment or fine, is prescribed for an offence, the same shall imply –

(a) that such offence shall be punishable upon conviction by a penalty not exceeding the penalty prescribed;"

Our attention has been drawn to section 53 of the Penal Code which reads:

"The punishments to which offenders are liable under the provisions of this Code are –

(a) death;

(b) imprisonment, which is of 2 descriptions namely –

(i) rigorous, that is with hard labour;

(ii) simple;"

without, it will be noted, any reference to life imprisonment.

In a series of definitions contained in Chapter II of the Penal Code under the heading "General Explanations" section 45 defines the word "life" as "(denoting) the life of a human being, unless the contrary appears from the context". The first section in Part II, section 6, provides that "Throughout this Code, ... every penal provision shall be understood subject to the exceptions contained" in Chapter II. The issue for our consideration is this: Is the sentence provided for in the first limb of section 304 a sentence fixed by law.

Section 6 of the Supreme Court Act in its subsection (6) provides that:

"The Court of Appeal shall have the jurisdiction, powers, duties and authority –

(a) vested, immediately before the coming into force of this Act, in the Court of Appeal of Sarawak, North Borneo and Brunei so far as such jurisdiction, powers, duties and authority –

(i) derived from any law in force in Brunei immediately before the coming into force of this Act; and

(ii) are not affected for the time being by any written law mentioned in paragraph (b); and

(b) conferred and imposed on the Court of Appeal by this Act and by any other written law enacted or made after the coming into force of this Act."

The Sarawak, North Borneo and Brunei (Courts) Order in Council (S.I. 1951 of 1948) provides in its section 18(1)(c) that a person convicted before the High Court may appeal with the leave of the Court of Appeal against the sentence passed upon his conviction, *unless the sentence is one fixed by law.* (Emphasis supplied)

As section 18(1)(c), to which we have made reference, is *in pari materia* with section 3 of the Criminal Appeal Act of 1907, it would seem that no appeal can be entertained should we find this sentence to be one fixed by law (*Practice Note* [1957] 2 All E.R. 378).

The wording of the sentencing portions of the offence sections of the Penal Code, where imprisonment is concerned, generally uses the phrase "with imprisonment of either description for a term which may extend to (X) years". We note that section 305 – the abetment of the suicide by a person under a disability – provides that the abettor shall be punished with death or imprisonment for life. We note the absence in section 304 of any apparent limitation connoted by the use of the words "shall be liable to" or "which may extend to". As we are in effect considering the provisions of the Criminal Appeal Act 1907, we are content to consider English authorities on the construction of the phrase which lies for our consideration. The preponderance of that authority is that the phraseology used does connote a sentence fixed by law (see *Halsbury's Statutes* Vol. 8 3rd Ed. pp. 466 and 541; *R.* v. *Assa Singh*[1]).

In *Chung Kum Moey* v. *Public Prosecutor*[2] and *Mohammed bin Jamal* v. *Public Prosecutor,*[3] the Privy Council in the first and the Federal Court of Malaysia in the second both, upon allow-

ing appeals against conviction for murder and substituting therefor verdicts of guilty of culpable homicide, imposed sentences of imprisonment for life. Subject to the effect, if any, of section 39 of the Interpretation and General Clauses Act, our answer to the question posed is that the punishment for "imprisonment for life" referred to in section 304 is a sentence fixed by law.

Now what of section 39? It seems to have been placed in the Act out of an abundance of caution. Its use of the phrase "not exceeding" is mirrored but not, unfortunately, followed by the phrase, to which we have referred to above, "which may extend to". However, it does not, in our judgment, in the light of the phraseology used in section 304, the "General Exceptions", Part II of the Penal Code and the generality of the authorities cited on the meaning of the phrase "shall be punished with imprisonment for life" affect the fixed nature of that sentence other than that it would not permit any sentence greater than life – death – being imposed.

In the event the appeal is dismissed.

Appeal dismissed.

Solicitors: *Sandhu & Co.*

KOK SONG KONG v. B.S.P. CO. SDN. BHD.

[C.A. (Yang P., Silke & Godfrey JJ.) 27 May 1988]

[Bandar Seri Begawan – Civil Appeal No. 15 of 1987]

Civil Procedure – Limitation period – Date of lodging writ at registry was different from date of sealing writ – When was suit considered to be "instituted" – Whether claim was statute-barred – "Instituted" – Meaning of – Limitation Act (Cap. 14), ss. 3, 4 & 11.

The plaintiff appealed from an order of the High Court which decided that the plaintiff's claim for damages in a work accident was barred by limitation.

The plaintiff was injured in a work accident on 20 April 1981. Under section 3 of the Limitation Act (Cap. 14), the limitation period for the plaintiff's claim of damages was three years and as such, was to expire on 20 April 1984. The plaintiff tendered his writ at the High Court registry on 18 April 1984 and paid the proper fees. However, from the date on the writ, the writ appeared to have been sealed on 23 April 1984, which was two days after the last day of the limitation period. The defendant contended that under the Brunei High Court (Civil Procedure) Rules, the writ by which the action was commenced is to be deemed to have been issued when it was sealed.

Held, allowing the appeal: (1) the fact that the court cannot deem the writ to have been issued before 23 April 1984 does not compel it to hold that the suit was not "instituted" on 18 April 1984;

(2) the plaintiff lodged the correct papers for the institution of the suit and paid the proper fees on 18 April 1984 and, accordingly, the writ should have been sealed on, or as of, that date. There is no express provision to that effect in the rules but it is a matter of necessary implication. The suit was therefore instituted on 18 April 1984, before the expiry of the limitation period;

(3) the date on which a suit is instituted may be crucial to the rights of the parties. To have those rights depend on the whim of a court functionary cannot be right. Such a thing cannot be allowed as an admissible feature of a civilized system of jurisprudence.

Cases referred to:

(1) *Evans* v. *Jones* (1862) 2 Best & Smith 46; 121 E.R. 991 (folld).

(2) *Jumatsah bin Daud & Anor.* v. *Voon Kin Kuet & Anor.* [1981] 1 M.L.J. 254 (folld).

(3) *Aly* v. *Aly* (1984) 128 Sol. J. 64; The Times 27 December 1983 (folld).

COURT OF APPEAL.

Daljit S. Sandhu for the appellant.

D.G. Howell for the respondent.

Cur. Adv. Vult.

Godfrey J. (delivering the judgment of the court): In this action the plaintiff appeals from an order of Dato Sir Denys Roberts made on 7 August 1987 dismissing the action on a preliminary point, taken by the defendant, that the plaintiff's claim was barred by limitation.

The plaintiff's claim is a claim for damages for personal injuries suffered by him, in the course of his employment by the defendant, as a consequence of an accident which befell him on 20 April 1981.

Section 3 of the Limitation Act (Cap. 14) provides, so far as is material, as follows:

> "... every suit instituted after the period of limitation prescribed therefor ... if limitation has been set up as a defence, shall be dismissed."

The prescribed period of limitation for the type of claim with which we are concerned is three years from the date on which the injury is committed (see item 92 of the First Schedule to the Act) excluding the day on which the accident happened (see section 11). The limitation period therefore expired on 20 April 1984. This was a Friday, a day when the court was closed. The court reopened on Saturday, 21 April 1984. That day was accord-